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BEFORE THE ARIZONA CORPORATION COMMISSION

2009 SEP 28 4:18

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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

SEP 28 2009



IN THE MATTER OF THE FORMAL  
COMPLAINT OF RICK L. STOCKETT, CFT  
INC. CPR LIFE MASK AND CAREFREE  
TRADING INC. AGAINST QWEST  
CORPORATION

DOCKET NO. T-01051B-09-0425

ANSWER AND STATEMENT OF  
DEFENSES

Qwest Corporation ("Qwest") files its Answer and Statement of Defenses to the Complaint filed by Rick L. Stockett, CFT INC. CPR LIFE MASK and Carefree Trading Inc. (the "Complainant").

1. Qwest neither admits nor denies the allegations in the first paragraph.

2. Qwest admits that Complainant contacted Qwest regarding telephone service, and spoke to Qwest employee Brianne Liimatainen. Qwest admits that Ms. Liimatainen provided information regarding "winback" discounts available for returning customers. Qwest admits that Ms. Liimatainen provided a quote for telephone service to Complainant regarding adding eight business telephone lines. Qwest denies the remaining allegations in the second paragraph.

3. Qwest admits that the emails referenced in the third paragraph of the Complaint, which are attached to the Complaint as Exhibits A and B, are correct copies of emails sent by Ms. Liimatainen to Complainant. Qwest states that the emails speak for themselves. Qwest denies the remaining allegations in the third paragraph.

1           4.       Qwest denies the allegations in the fourth paragraph of the Complaint.

2           5.       Qwest admits that the email referenced in the fifth paragraph of the Complaint  
3 referencing the attached email from Michael Wright, is a correct copy of an email sent by Qwest  
4 employee Michael Wright to the Complainant. The email speaks for itself. Qwest denies the  
5 remaining allegations of the fifth paragraph.

6           6.       Qwest admits that complainant has been paying Qwest \$280.00 per month.  
7 Qwest denies the other allegations in the sixth paragraph.

8           7.       Qwest admits the allegations stated in the seventh paragraph.

9           8.       Qwest admits that the email referenced in paragraph 8, from Brent Anderson,  
10 attached as Exhibit D to the Complaint, is a correct copy of an email sent by Qwest employee  
11 Brent Anderson. The email speaks for itself. Qwest admits that the initial quote provided by  
12 Brianne Liimatainen was an incorrect, too-low quote for the eight win back lines. Qwest denies  
13 the other allegations in the paragraph.

14          9.       Qwest provides the telephone services listed below to the Complainant. The  
15 monthly recurring bills based on the tariff rates for such services are stated as well:

16           **Account 602 992-1220**

17           8 Market Expansion Lines = \$22 each = **\$176/month**  
18           2 Additional Paths = \$22 each = **\$44/month**  
19           Local Usage = **\$30/month (Approx)**  
             Monthly Long Distance = **\$10/month** – Including 8xx (Approx)  
             Tax = \$35/month (Approx)

20                   **TOTAL MONTHLY = \$305 (Approx)**

21           **Account 480 488-3777**

22           4 Choice Business = \$39.99 x 6 lines = **\$159.96/month**  
23           6 Choice Business Add A Line = \$27 x 4 lines = **\$108/month**  
24           10 Federal Access Charge = \$6.20 per line x 10 = **\$62/month**  
25           3 Call Fwding svc (roll over features) = \$2.50 x3 = **\$7.50/month**  
26           Choice Business Discount (3 yr term) = **(\$50.99/month) (credit)**  
             High Speed Internet 7 mg = **\$56.25/month**  
             High Speed Internet Discount = **(\$6.93/month) (credit)**  
             Office Basic (Internet Svc Provider) = **\$13/month**  
             Monthly Long Distance = **\$90/month** – Including 8xx (Approx)

1 Tax = \$49/month (Approx)

2 TOTAL MONTHLY = \$488 (Approx)

3 TOTAL MONTHLY, BOTH ACCOUNTS=\$793 (approximate)

4 10. In order for the Complainant to keep the same telephone numbers that the  
5 Complainant had from its previous VoIP provider in conjunction with the local exchange  
6 switched wireline services, it is necessary for the customer to also subscribe to Market  
7 Expansion Line ("MEL") service. The Complainant agreed to subscribe to the MEL services.  
8 The charges for the MEL services are a substantial part of the difference between the initial  
9 quote provided by Ms. Liimatainen and the amounts that Qwest believes Complainant should  
10 pay.

11 11. Qwest has provided "winback" discounts in the form of credits, fulfilling the  
12 initial offer of three months monthly charges for the eight additional business lines.

13 12. Because of the dispute raised by the Complainant, Qwest has not taken any steps  
14 to collect from the Complainant, or to disconnect the services for nonpayment. Qwest's billing  
15 system does not have a category of charges in dispute. In order to prevent disconnection action  
16 for past due balances, Qwest has credited the Complainant's accounts or issued orders that no  
17 collection action should be taken. Such actions are not an admission of liability or a waiver of  
18 Qwest's right to receive payment for the tariffed rates for telephone services.

19 13 Qwest denies specifically that it has engaged in unfair and unethical business  
20 practices, or made gross misrepresentations with or without unlawful intent.

21 14. Qwest has offered to waive early termination charges if the Complainant should  
22 decide to switch other providers.

23 15. The Complainant asks "that Qwest be ordered by the Commission to provide the  
24 services to me at the prices they initially promised." The Complainant's demand is in the nature  
25 of a request for specific performance of contract. Specific performance of contract is not  
26 available as a remedy when a legal remedy is adequate, and is not available at all for service

1 contracts. Therefore, the Complainant's request must be denied.

2 16. Qwest specifically denies that the initial quote was an offer that formed the basis  
3 of an enforceable contract. The terms of the agreement are the provisions of the tariffs that are  
4 filed and effective with the Commission. Parties to transactions entered into for utility services  
5 that are the subject of filed tariffs are charged with notice of rate filed. As a matter of law and as  
6 a matter of corporate policy, Qwest service representatives are not authorized to make offers that  
7 do not comport with the filed tariffs.

8 17. In the alternative, Qwest asserts that the Complaint raises no justiciable claim or  
9 controversy. Complainant alleges only that he is "apprehensive that if Qwest cuts off my service  
10 it could cost my businesses millions of dollars in damages." Complaint, p. 2.

11 18. Paragraphs 1 through 17 are incorporated in this paragraph. As an affirmative  
12 defense, Qwest asserts that the alleged contract for lower rates is void as against public policy,  
13 because it provides rates lower than those that are listed in Qwest's schedule of rates filed at the  
14 Commission. The legal doctrine known as the "filed rate doctrine" is designed to uphold  
15 statutory requirements, such as exist in the Arizona statutes, that public utilities must have their  
16 rates filed with the regulatory agency, and may not grant a preferential rate to any customer.  
17 Under the filed rate doctrine, the filed rate is the only rate that can be charged, even assuming  
18 that the carrier had intentionally misrepresented its rate and the customer had relied on those  
19 misrepresentations. *American Tel. & Tel. Co. v. Central Office Tel.*, 524 U.S. 214, 118 S.Ct.  
20 1956 (1998).

21 19. Paragraphs 1 through 18 are incorporated in this paragraph. As an affirmative  
22 defense, Qwest states that its Exchange and Network Services Price Cap Tariff 2.4.1.A limits its  
23 liability for claims such as those brought by the Complainant, arising out of errors made by  
24 Qwest.

25 WHEREFORE, Qwest denies that Complainant is entitled to the relief requested and  
26 respectfully submits that the Commission should deny the Complaint

1 RESPECTFULLY SUBMITTED, the 28th day of September, 2009,  
2

3 QWEST CORPORATION  
4

5  
6 By: 

Norman G. Cultright  
Corporate Counsel  
20 East Thomas Road, 16<sup>th</sup> Floor  
Phoenix, Arizona 85012  
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*Its Attorney*

1 ORIGINAL and 13 copies hand-delivered  
2 for filing this 28th day of September, 2009, to:

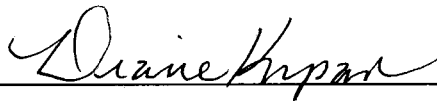
3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington Street  
6 Phoenix, AZ 85007

7 COPY of the foregoing hand delivered  
8 this 28th day of September, 2009, to:

9 Lyn Farmer  
10 Chief Administrative Law Judge  
11 Arizona Corporation Commission  
12 1200 West Washington Street  
13 Phoenix, AZ 95012

14 Janice Alward, Esq.  
15 Legal Division  
16 ARIZONA CORPORATION COMMISSION  
17 1200 W. Washington Street  
18 Phoenix, AZ 85007

19 Rick L. Stockett  
20 CFT INC. CPR LIFE MASK and  
21 Carefree Trading Inc.  
22 P.O. Box 1050  
23 500 Easy Street  
24 Carefree, Arizona 85377

25   
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